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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/407,569	09/28/1999	BARRY SHEPARD	10836.39US01	2929

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EXAMINER
ROBINSON BOYCE, AKIBA K

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	09/407,569	SHEPARD ET AL.	
	Examiner	Art Unit	
	Akiba K Robinson-Boyce	3623	

-- The MAILING DATE of this communicati n appears on the cover sheet with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 July 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18,36-53 and 71-88* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18, 36-53, 71-88* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Continued Prosecution Application

1. The request filed on 6/27/03 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/407569 is acceptable and a CPA has been established. An action on the CPA follows.

Status of Claims

2. In response to the communication received on 7/17/03, the following is a non-final office action. Claims 19-35, 54-70 and 89-106 have been cancelled. Claims 1-18, 36-53, and 71-88 remain pending in this application and have been examined on the merits. Claims 1-18, 36-53 and 71-88 are rejected. The previous rejection has basically been repeated with the exception of minor additions in order to clarify the rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-18, 36-53, and 71-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell (US Patent 5,424,945) and further in view of Frost (US Patent 5,041,972).

As per claims 1, 36, 71, Bell discloses:

A method for determining, using a computer system having one or more processors (Col. 17, lines 1-15, [word processor[10]], perception management related to customer preferences for a plurality of visual representations stored in a database system coupled to the computer system, (Col. 17, lines 46-51, Fig. 4, [12], where the visuals are stored in the application software, which is connected to the computer system, also in Col. 15, lines 6-9, it is shown that the visual representations represented by color are stored in a look-up table, which represents the database), the plurality of visual representations including one or more particular visual representations including at least one of a specifically prepared customized visual representation, (Col. 17, lines 52-53, [line, value, color, shape, direction]), and a custom-selected visual representation, (Col. 18, lines 26-33 and lines 42-50, [mellow, neat, fresh], the particular visual representations being of interest to customers associated with target focus groups, (Col. 2, lines 14-31, [subgroups having a visual impression]), each visual representation embodying cues that relate to the visual representation (Col. 15, lines 16-18, [where cues are represented by the color combinations under the headings that represent visual representations]), that influence human behavior by synergistically triggering desired perceptions, (Col. 14, lines 46-68, [where the colors are shown to have an inherent psychological effect]):

Outputting from the computer system to a customer one or more of the particular visual representations using and output device coupled to the computer system, (Col. 4, lines 29-34, [where the pages of the document are shown to have visual aspects], Col. 17, lines 5-7 [printing the document out from the personal computer]).

Receiving, in the computer system from the customer, using an input device coupled to the computer system, classification information relating to the customer's perception of the one or more outputted particular visual representations, (Col. 24, lines 45-53 w/ Fig. 4., [receiving answers in relation to a specific algorithm relating to a visually-perceptible characteristic, and yielding a value where answers are received by the user utilizing the system of the present invention, which is shown to have a personal computer for inputting information]);

The classification information comprising,

At least one cue perceived by the customer in response to viewing the particular visual representations, (Col. 15, lines 16-18, [where cues are represented by the color combinations under the headings that represent visual representations]),

Bell fails to teach the following, however Frost discloses:

An ordered ranking of the particular visual representations sorted as a function of a polling of the customer, (Col. 4, lines 9-15, [ordering the descriptors according to respective ranks]; and

Using the ordered ranking to identify related cues that influence human behavior and that help manage customer perception in the target focus group, (Col. 8, lines 40-

67, Fig. 4a, [where the rankings are represented by numbers 1-5 in Fig. 4a and the cues are represented by inexpensive and convenient]).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to rank the visual representations and to use the rankings to identify related cues that influence human behavior with the motivation of determining the extent to which a visual representation influences a customer.

As per claims 2, 37, 72, Bell discloses:

Further comprising identifying at least one cue perceived by the customer in response to viewing one of the particular visual representations, the identified at lest one cue relating to any determined one or more of the plurality of visual representations, including one or more or the particular visual representations, (Col. 16, lines 32-35, [objective descriptions represent the cues], Col. 17, lines 46-60, [here, the cues are represented by the observed elements]).

As per claims 3, 38, 73, Bell discloses:

Further comprising identifying at least one cue perceived by the customer in response to viewing one of the particular visual representations, the identified at least one cue relating to one or more elements of the particular visual representations, (Col. 17, lines 53-55, [where the cue is represented by the observed elements and the visual principles of unity, conflict, dominance, etc. represent the one or more elements]).

As per claims 4, 39, Bell discloses:

Further comprising receiving in the computer system, a database comprising a plurality of particular visual representations that are configurable by a user, (Col. 15,

lines 6-13, it is shown that the visual representations represented by color are stored in a look-up table, which represents the database, and the color combinations represent the configurable aspect).

As per claims 5, 6, 40, 41, 75, 76, Bell discloses:

Wherein the database is created by the user, /wherein the database is created by a third party, (Col. 15, lines 36-42, [graphic designer overriding the system where the graphic designer serves as both the user and the third party]).

As per claims 7, 77, Bell fails to disclose the following, however Frost discloses:

Wherein each visual representation in the database is associated with an agent that identifies relationships between one or more of the particular visual representations and one or more other visual representations stored in the database, (Col. 8, line 54-Col. 9, lines 11, [represented by relationships between Euclidean distance where the Euclidean distance represents the difference between the ideal and each item, where the agent is represented by the St. James' theorem]).

It would have been obvious to one of ordinary skill in the art for each visual representation in the database to be associated with an agent that identifies relationships between one or more of the particular visual representations and one or more of the other visual representations stored in the database with the motivation of calculating the difference between a human's perception and an average reaction to determine actual human behavior.

As per claims 8, 43, 78, Bell discloses:

Wherein the classification information comprises ratings further comprising determining an average rating for a particular visual representation as a function of the ratings, (Col. 16, lines 29-46, [represented by collectively taking the series of objective descriptions of the appearance of a document into account to yield point scores, in this case the point scores represent the average rating]).

As per claims 9, 44, 79, Bell discloses:

The classification information for one or more of the outputted particular visual representations comprises ratings...(Col. 16, lines 29-46, [represented by point scores]); and

A ranking of one or more of the particular visual representations as a function of the ratings, (Col. 8, lines 50-53, [ranking according to degree of preference])

It would have been obvious to one of ordinary skill in the art to processes the rating in order to identify a ranking of one or more of the outputted particular visual representations with the motivation of identifying the level of importance of particular reaction.

As per claims 10, 13, 45, 48, 80, 83, Bell discloses:

Further comprising receiving in the computer system a response from the customer related to one or more of the particular visual representations, (Col. 24, lines 38-46, [receiving a combination of answers]).

As per claims 11, 46, 81, Bell discloses:

Wherein the response comprises a description of at least one of the particular visual representations, (Col. 16, lines 28-35, [objective descriptions, which are collectively taken into consideration]).

As per claim 12, 47, 82, Bell discloses:

A description of an emotion of the customer in response to viewing a particular visual representation, (Col. 15, lines 9-18, [childlike, dignified, etc.]).

Bell fails to disclose the following, however Frost discloses:

A rationale for ranking a set of one or more particular visual representations against a specific desired perception and an opposite perception, (Col. 8, lines 50-53, [where rationale is represented by the expressed degree of preference]).

It would have been obvious to one of ordinary skill in the art to have a rational for ranking a set of one or more outputted particular visual representations against a specific desired perception and any one of its opposite with the motivation of determining the reason why certain visual representations were chosen in a particular order.

As per claims 14, 49, 84, Bell discloses:

Processing the received classification information, (Col. 24, lines 48-52, [applying a point-score to the answers provided]

outputting from the computer system an initial desired perception and different visual representations to be chosen by one or more customers as representative samples that reinforce the initial desired perception; and (Col. 24, lines 52-54, [yielding]);

Bell fails to disclose the following, however Frost discloses:

Collecting customer observations and rationale for ranking of the chosen visual representations, (Col. 8, lines 45-53, [where the rationale is represented by the degree of preference]);

It would have been obvious to one of ordinary skill in the art to collect customer observations and rationale for ranking the chosen visual representations with the motivation of determining the meaning of why certain representations were chosen.

As per claims 15, 50, 85, Bell discloses:

further comprising refining the initial desired perception to represent a more clearly focused desired perception, (Col. 18, line 22-Col. 19, line 28, [determining which tests are most profitably applied to a given document]).

As per claims 18, 53, 88, Bell discloses:

Further comprising receiving the classification information from at least one customer using a computer terminals in communication with the computer system via a network, (Col. 24, lines 45-53 w/ Fig. 4., [receiving answers in relation to a specific algorithm relating to a visually-perceptible characteristic, and yielding a value where answers are received by the user utilizing the system of the present invention, which is shown to have a personal computer for inputting information]).

As per claims 16, 51, 86, Bell discloses:

Creating a set of visual concepts that leverage the at least one cues perceived by the customer in response to viewing the particular visual representation, (Col. 7, lines 3-51, [visual elements]);

Bell fails to disclose the following, however Frost discloses:

outputting from the computer system a perceptual map using the output device, (Col. 19, lines 28-36, [perceptual map]);

receiving input from the user regarding correlation of the set of visual concepts with the perceptual map, (Col. 20, lines 1-6, [eliciting consumer's evaluation]).

It would have been obvious to one of ordinary skill in the art to place a set of visual concepts on a perceptual map with the motivation of allowing a user to actually determine one visual concept from another.

As per claims 17, 52, 87, Bell fails to disclose the following, however Frost discloses:

Analyzing the correlation of the set of visual concepts with the perceptual map, (Col. 12,lines 56-59, [measuring the correlation]);

and refining the correlation of the set of visual concepts with the perceptual map as a function of the analysis, (Col. 12, lines 59-61, [calculating concomitant adjustments]).

It would have been obvious to one of ordinary skill in the art to analyze the placement of the visual concepts on the perceptual map and also to organize the visual concepts with the motivation of allowing a user to actually visualize and be able to manipulate visual concepts to make the visualization and the determination of behavior easier.

Response to Arguments

5. Applicant's arguments with respect to claims 1-18, 36-53, and 71-88 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 703-305-1340. The examiner can normally be reached on Monday through Friday, 8:30 am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7238 [After final communications, labeled "Box AF"], 703-746-7239 [Official Communications], and 703-746-7150 [Informal/Draft Communications, labeled "PROPOSED" or "DRAFT"].

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

A. R. B.
August 5, 2003

TARIQ R. HAFIZ
SUPERVISORY PATENT EXAMINER
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